



United States - Peru Free Trade Agreement
Rep. Henry A. Waxman
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Mr. Speaker. I rise in support of the U.S.-Peru Free Trade Agreement. This has not been an easy decision. This is not an ideal agreement. But it contains significant improvements negotiated by the Democratic leadership. And because of these changes the agreement represents a critical step toward a more progressive trade policy that raises standards for labor, the environment, and public health.

Under the Bush Administration, U.S. trade policy has gone from bad to worse. Instead of using trade agreements to raise standards of living, the U.S. Trade Representative has approached negotiations putting corporations ahead of consumers and profits ahead of people.

In recent agreements with Central America, Morocco, and others, labor standards and environmental rules have been made expendable and unenforceable on paper and in practice. Trade provisions aggressively pursued on behalf of the pharmaceutical industry have sought to delay generic competition in developing countries where the absence of affordable medicine can mean the difference between life and death.

Initially, the Peru FTA was no different. However, this spring the Democratic congressional leadership successfully negotiated substantial improvements to the agreement.

On the medicines issue, specifically, the revised FTA restores much of the flexibility needed to safeguard generic competition and protect public health. For example, patent extensions are no longer mandatory in the event of regulatory delays. The agreement directs patent disputes to be resolved through the court system, instead of forcing regulatory agencies to link marketing approval to the status of a drug's patent. Language was also added to make clear that the FTA does not and should not prevent Peru from taking measures to protect public health.

The Peru FTA is not perfect. There is a provision that delays the availability of generics for up to five years after a new drug is approved, even in the absence of a patent. USTR maintains that this "data exclusivity" provision is supposed to mirror a provision in U.S. law intended to incentivize research by allowing drug companies to recoup the costs associated with producing the clinical test data necessary for drug approval. But Peru is not a mirror image of the United States. It is a small developing market where the profitability for drug makers is minimal and the impact on a large population of poor and uninsured patients could be severe.

The revised Peru FTA does make clear that Peru can override this five-year restriction if public health needs demand it. Additionally, the new FTA has a mechanism for generic medicines to become available in Peru no later than they are available in the United States. However even with these key exceptions, I believe data exclusivity is a clear example of how further changes are necessary in our negotiations with developing countries.

Another area that needs reevaluation is the “investor-state” provisions that permit private investors to use trade tribunals to bypass regular legal channels in challenging government actions and regulations. While there have been some improvements to make the tribunals more transparent, greater reform is necessary to prevent abusive and unfair efforts by investors to undermine environment, health, safety and other laws and regulations. I would also like to see further progress to use trade agreements to strengthen adherence to core labor standards.

The bottom line is that overall the improvements to the Peru FTA are a real achievement. Today, we can finally put a stop to the Bush Administration’s “one size fits all” approach to trade negotiations. While it will take more than a revised Peru FTA to overhaul our trade policy in broader ways, this trade agreement is an important first step in the right direction. For that reason I will support it today.